IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION.

WRIT PETITION NO.2674 OF 2005

Ramchandra Arakhita Gouda, .. Petitioner

Vs

1. The Union of India and ors. .. Respondents

Mr R.G.Walla, for the petitioner.

Mr S.C.Dhawan, for the respondent-UOI.

CORAM : V.G.PALSHIKAR & D.B.BHOSALE,JJ.

DATE : 16th August, 2005.

PC:

1. Heard the learned counsel for the parties.

2. By this petition, the petitioner has challenged the order of the Central Administrative Tribunal rejecting his Original Application challenging the departmental orders passed in the disciplinary matter initiated against the petitioner.

3. The petitioner was employed with the Indian

Railways for several years, after which it came to light that his appointment was not genuine. Therefore, the departmental proceedings were started against the petitioner for seeking employment on the basis of the document, which is not genuine. A show cause notice was issued; charges were framed and the enquiry officer, on consideration of the material produced before it, came to the conclusion that the petitioner was guilty of the charge levelled against him.

4. The charge was that the petitioner has sought and obtained the appointment with the Central Railways by producing a bogus appointment letter dated 16.9.1987. The basic charge, therefore, against the petitioner was producing a bogus appointment letter. On enquiry, it was found by the enquiry officer that the letter dated 16.9.1987 was bogus and,therefore, the services of the petitioner were terminated. This order of the enquiry officer was confirmed in appeal and in revision. Hence, the original application before the Administrative Tribunal.

5. The contentions urged before the Tribunal and also before us are four. The first contention is that there was inordinate delay in proceeding against the

petitioner; he having been appointed seventeen years ago. There is no substance in this contention for the simple reason that he has been proceeded departmentally after the fraud committed by the petitioner came to light. An appointment secured on the basis of a bogus and fraudulent appointment letter is no appointment in the eye of law and, therefore, taking action against him to such a conduct can never be said to have been delayed.

6. The second contention is that there is no evidence to prove that the appointment letter dated 16.9.1987 was bogus. The enquiry report and the order of the disciplinary authority is based on no evidence and, therefore, is liable to be interfered with. Another facet of this submission is that the enquiry authorities have wrongly placed the burden of proof on the petitioner and, therefore, the entire proceedings were misdirected. The basic charge in this case has been gone into. It was securing an appointment on the basis of the bogus appointment letter. There is evidence of communication saying that no such communication as alleged, viz the letter dated 16.9.1987, was emanated from the concerned office. The question of shifting burden of proof does not arise in

this case for the simple reason that it is the petitioner who alleges that the letter dated 16.9.1987 is issued by the person who has an authority to issue it. It was,therefore, the issuance of the communication which was in the special knowledge of the petitioner. It is a basic rule of law of Evidence that he, who alleges the fact, shall prove. The petitioner has alleged the fact that the letter was genuine. It was for him to prove that it was so genuine. Therefore, there is no question of any burden of proof that has been wrongly shifted. All these aspects have been considered by the Tribunal in the impugned order. We confirm all the findings recorded by the Tribunal. The only argument here that the orders are based on no evidence and, therefore, interference by the writ court is possible, does not hold much water. There is evidence, according to him, that the burden shifted from the railways to the employee who asserts that the communication dated 16.9.1987 is genuine. In this view of the matter, there is no reason to interfere. The writ petition is dismissed.

(D.B.BHOSALE, J.) **(V.G.PALSHIKAR, J.)**